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International Covenant on Civil and Political Rights

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Human Rights Committee

Decision adopted by the Committee under the Optional Protocol, concerning communication No. 2249/2013*, **

Communication submitted by:	R.E. (not represented by counsel)
Alleged victim:	The author
State party:	Russian Federation
Date of communication:	20 December 2011 (initial submission)
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 11 June 2013 (not issued in document form)
Date of adoption of decision:	19 July 2018
Subject matters:	Torture; forced confession; effective remedy
Procedural issue:	Exhaustion of domestic remedies
Substantive issues:	Torture; forced confession; effective remedy
Articles of the Covenant:	2 (3), 7 and 14 (3) (g)
Articles of the Optional Protocol:	2 and 5 (2) (b)

1. The author of the communication is R.E., a national of the Russian Federation born on 25 June 1978. He claims that the State party has violated his rights under articles 2 (3), 7 and 14 (3) (g) of the Covenant. The Optional Protocol entered into force for the State party on 1 January 1992. The author is not represented by counsel.

The facts as submitted by the author

2. On 3 May 2007, the author was interrogated at 3 p.m. at home about the death of his mother, who had died earlier that day by falling down a flight of stairs at their house. He provided written testimony that it was an accident and that she had tripped and fallen down the stairs. At 10 p.m. on the same day, he was taken to the police station, where he was beaten for one hour by a police officer whose surname was Voronin. He was then interrogated by an investigator whose surname was Listarov, for 25 minutes, from 11.20 p.m. to 11.45 p.m. At the end of the interrogation, the author confessed to being drunk and pushing his mother from the top of the stairs, then hitting and kicking her while she was on

* Adopted by the Committee at its 123rd session (2–27 July 2018).

** The following members of the Committee participated in the examination of the communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Bamariam Koita, Duncan Laki Muhumuza, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

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the floor.[1] He claims that the second interrogation was in violation of the law which prohibits night-time interrogations.[2] Also, the lawyer who was appointed to him did not provide him with quality legal assistance, because he failed to protect his rights when he was unlawfully interrogated at night-time, and later defrauded him of 20,000 roubles[3] and failed to file a cassation appeal on his behalf.[4] On 30 August 2007, the author was found guilty by Sosnovskiy District Court of premeditated infliction of grave bodily harm which caused the death of his mother, and was sentenced to 10 years in prison. On 19 October 2007, his sentence was reduced to 9 years and 10 months by Nizhegorodskiy Regional Court on cassation appeal. On 7 July 2008, the Supreme Court of the Russian Federation denied the author's appeal for a supervisory review.

The complaint

3.1 The author claims that the failure to provide an effective remedy in response to his complaints amounts to violation of his rights under article 2 (3) of the Covenant.

3.2 The author also claims that the beatings by the police on the day of his arrest amount to violation of article 7 of the Covenant.

3.3 The author further claims a violation of article 14 (3) (g) of the Covenant, due to the forced confession extracted from him by the police.

State party's observations on admissibility

4. In a note verbale dated 2 October 2013, the State party noted that during the pretrial investigation the author had fully confessed to having committed the crime and had not submitted any complaints regarding unlawful actions by the police. The State party also noted that, on 25 December 2009, Pavlovskiy City Court had refused to initiate a criminal case against the author's lawyer, and the author had not appealed against that decision. The lawyer was hired by the author on a contractual basis.[5] On 31 March 2011, the author submitted an appeal for a supervisory review of his verdict to the Sosnovskiy district prosecutor's office. In his appeal, he claimed that after his arrest on 3 May 2007 he had been beaten by police officers of Sosnovskiy district. The prosecutor's office decided that there were no grounds for a supervisory review, however the author did not appeal against that decision. The State party claimed that since the author had not exhausted all available domestic remedies, his communication should be deemed inadmissible.

State party's observations on the merits

5.1 In a note verbale dated 29 January 2014, the State party noted that on 30 August 2007 Sosnovskiy District Court had sentenced the author to 10 years in prison for premeditated infliction of grave bodily harm causing the death of his mother. On 19 October 2007, after hearing his cassation appeal, Nizhegorodskiy Regional Court reduced the author's sentence to 9 years and 10 months on the grounds that his confession should have served as a mitigating circumstance. On 10 November 2011, Krasnobakovskiy District Court further reduced the sentence to 9 years and 8 months of prison to bring it into compliance with the new Criminal Code. The author's guilt was proved by his own testimony during the pretrial investigation, according to which he pushed his mother from behind, which made her fall down the staircase, then hit her in the face with the palm of his hand, then hit her head against the corner of a door. It was also proved by the testimony of his father, who saw the author grabbing his mother by her hair and kicking her; by the testimony of a witness named Starova, who saw blood on the author's hands when he came

[1] Case documents show that the author was questioned in the presence of his lawyer.

[2] Article 164 of the Criminal Procedure Code allows for interrogations only between 6 a.m. and 10 p.m. Interrogations after 10 p.m. are allowed only in circumstances where the interrogation cannot be postponed.

[3] The author claims that the lawyer asked for Rub. 20,000 ($700 at that time) for his services, part of which was supposed to go to an unnamed person who would ensure that the author received the lightest possible sentence.

[4] Case documents show that the cassation appeal was submitted by the author himself.

[5] Case documents show that the lawyer was appointed by the investigator.

to her house after his mother had died; by the results of the autopsy, which excluded the possibility of the victim receiving all of her injuries just by falling down the stairs from an upright position; and by other evidence in the case.

5.2 The State party also noted that the author's lawyer had been appointed by the case investigator in accordance with article 41 of the Criminal Procedure Code and had acted in the interests of the author. Neither at his trial nor at his cassation appeal did the author indicate that any unlawful methods of investigation had been used against him. On 10 April 2012, the author submitted a complaint of unlawful arrest and coerced confession, which resulted in an inquiry in accordance with articles 144–145 of the Criminal Procedure Code[6] by the Pavlovskiy interdistrict office of the Investigative Committee and in the subsequent refusal to open a criminal case on 9 May 2012 due to an absence of corpus delicti. The refusal was upheld on appeal by Sosnovskiy District Court on 26 June 2012 and by Nizhegorodskiy Regional Court on 28 September 2012.

5.3 The State party noted that the author had been questioned as a suspect on 3 May 2007 between 11.20 p.m. and 11.45 p.m. and that the circumstances did not allow for the questioning to be postponed. He was questioned immediately after his detention and in the presence of a lawyer who had been assigned to him. The detention and interrogation records on the author show that he did not make any statements about unlawful methods of influence having been used on him. On 4 May 2007, Sosnovskiy District Court arrested him, and detained him for the duration of the pretrial investigation, and that decision was not appealed against by the author. The Pavlovskiy interdistrict office of the Investigative Committee on several occasions refused the author's complaints in which the author requested that a criminal investigation be initiated into the actions of his lawyer, with the last such refusal dated 4 December 2013. The refusal was later annulled by the head of the Pavlovskiy interdistrict office of the Investigative Committee and the complaint was returned for an additional inquiry. In case the author is not satisfied with the results of the additional inquiry, he will have the right to appeal against the decision in accordance with the procedure established under chapter 16 of the Criminal Procedure Code. Therefore, the author's claims of violation of his rights have not been found to be substantiated.

Author's comments on the State party's observations

6.1 In a letter dated 1 April 2014, the author commented on the observations of the State party. He claimed that the violence that had been used against him by the police to extract his confession amounted to a violation of article 7 of the Covenant. The author noted that his first complaint about his lawyer's failure to provide him with quality legal assistance had been to the prosecutor's office of Sosnovskiy district, on 14 December 2009. The district prosecutor's office had transferred his complaint to the Investigative Committee, and on 25 December 2009 the Pavlovksiy interdistrict office of the Investigative Committee had rendered a decision to refuse a criminal investigation into the author's claims. On 17 November 2010, the head of the Pavlovskiy interdistrict office of the Investigative Committee had annulled the refusal to initiate a criminal investigation and sent the case back for an additional inquiry. During the inquiry, both the author's lawyer and the investigator in his case refused to testify,[7] and on 29 November 2010 the same investigator from the Pavlovksiy interdistrict office of the Investigative Committee rendered a new refusal to open a criminal investigation. That refusal was again annulled by the head of the interdistrict office on 3 December 2010, however the additional inquiry ended in another

[6] It is stated in article 144 of the Criminal Procedure Code that an inquirer, an investigator and a public prosecutor shall be obliged to accept and to examine a communication about any committed or prepared crime and, within the scope of the competence established by the present Code, to take the decision on it within a term of not more than three days from the day on which the said communication was received. When examining a report on a crime, the inquirer, the investigator and the public prosecutor shall be entitled to demand to carry out documentary and audit inspections and to invite specialists to participate in them.

[7] Case documents show that the lawyer refused to give testimony with regard to the nature of his legal defence work, and that the investigator refused to provide any testimony citing article 51 of the Constitution (no one shall be obliged to give testimony against themselves, a close relative, etc.).

refusal, on 13 December 2010. The assistant district prosecutor upheld the refusal to open a criminal investigation, on 7 March 2012.

6.2 On 21 July 2013, the author submitted another complaint about his unlawful arrest, the beatings by the police and the actions of his lawyer, to the head of the Investigative Committee of the Russian Federation. His complaint was transferred to the district prosecutor's office, which on 4 September 2013 refused to initiate a criminal investigation into the author's claims due to an absence of corpus delicti. That refusal was annulled and the complaint was sent for an additional inquiry, which on 4 December 2013 resulted again in a refusal to initiate a criminal investigation. On 6 February 2014, the district prosecutor again annulled the refusal, on the grounds that the author had not been informed about the results of the additional inquiry.

6.3 With regard to the State party's observations on admissibility, the author rejected the State party's claim that he did not submit any complaints during his trial. He noted that during his trial he orally submitted several complaints to the court,[8] but could not do so in writing because his lawyer had prevented him from receiving a pen and paper while he was in detention, so he could not submit any written complaints.

6.4 The author also rejected the State party's claim that he did not appeal against the 25 December 2009 refusal to initiate a criminal investigation. He noted that this refusal was rendered not by Pavlovskiy City Court, but rather by the Pavlovskiy interdistrict office of the Investigative Committee, and that it was annulled on 17 November 2010 as a result of his appeal. The author also rejected the State party's claim that he had hired his lawyer. He noted that his lawyer had been assigned to him by the court.[9] The author noted that on 12 August 2013 he submitted a complaint to the head of the Investigative Committee of the Russian Federation against unlawful actions of the police, however the State party on several occasions refused to open a criminal investigation into his complaints. Therefore, the author claimed to have exhausted all effective domestic remedies.

6.5 With regard to the State party's observations on the merits of the case, the author reiterated that in his initial testimony he told the police that his mother fell due to an accident, however he was later forced by the police to change his testimony and confess to having pushed and beaten his mother. He noted that since he had already been interrogated by the police at 3 p.m. on 3 May 2007, there were no circumstances that meant that his second interrogation, at 11.20 p.m. on the same day, could not have been postponed, thus any testimony given after 10.00 p.m. should have been ruled inadmissible by the court. He also noted that the court did not correctly evaluate all available evidence, as there were contradictions between the witness testimonies and the medical evidence.

State party's additional observations on the merits

7. In a note verbale dated 2 October 2014, the State party noted that the Pavlovskiy interdistrict office of the Investigative Committee had conducted several inquiries into the author's allegations about unlawful actions by his lawyer, all of which had resulted in refusals to open a criminal investigation into the matter, with the last such refusal being made on 3 July 2014 and upheld by the Office of the General Prosecutor of the Russian Federation. Also, on 22 April 2013, Sosnovskiy District Court denied the author's lawsuit against his lawyer, for moral damages due to inadequate legal assistance. On 22 July 2014, Nizhegorodskiy Regional Court denied the author's appeal and upheld the decision of the district court.

Author's additional observations on the merits

8. In a letter dated 20 October 2014, the author reiterated the unlawfulness of his interrogation after 10 p.m. and the inadmissibility of his confession. He claimed that his appeal to the General Prosecutor of the Russian Federation for a supervisory review of his sentence was unlawfully reviewed on 4 September 2014 by the head of the cassation and supervisory review department at the Office of the General Prosecutor, whereas it had been

[8] The author does not provide details of his complaints.

[9] Case documents show that the lawyer was assigned to the author by the investigator.

addressed to the General Prosecutor personally. He also claimed that neither the trial court nor the cassation court knew that he had been unlawfully interrogated and detained on the night of his mother's death, and that this should be viewed as a new circumstance in the case and serve as grounds for a new trial. The author submitted that on 26 May 2014, Sosnovskiy District Court had denied his complaint against the Pavlovskiy interdistrict office of the Investigative Committee for failure to investigate his claims against his former lawyer. He noted that the court had reviewed his complaint in his absence, although he had specifically motioned the court to provide for his presence during the hearing.

State party's further observations on the merits

9.1 In a note verbale dated 7 April 2015, the State party noted that a review of the arguments made by the author in his defence during the trial had shown that he had not made any statements regarding his treatment while in detention or regarding violation of his right to defence. His line of defence was that he did not cause the injuries that led to the death of his mother. When reaching the verdict, the court took into consideration, inter alia, his confession made during the pretrial investigation. In his cassation appeal filed on 5 September 2007, the author asked the court to find the confession he had given during the pretrial investigation inadmissible as he had been in a state of shock from what had happened and had been under the influence of alcohol. He did not provide any other grounds for inadmissibility of his confession.

9.2 Starting from 2008, the author submitted several appeals for a supervisory review. On 27 June 2008 he submitted his first appeal, in which he claimed that his confession had been coerced by the police. On 7 July 2008, that appeal was denied by the Supreme Court of the Russian Federation. On 1 August 2011, he submitted another appeal, in which he added that his lawyer had not provided him with quality legal assistance. That appeal was denied by Nizhegorodskiy Regional Court on 31 August 2011. On 20 December 2011, the author submitted another appeal containing allegations of police coercion. On 17 January 2012, that appeal was denied by the Chairperson of Nizhegorodskiy Regional Court.

9.3 The State party noted that the author's allegations of failure by his lawyer to provide quality legal assistance had also been subject to several inquiries by investigative bodies. On 29 November 2010, the Pavlovskiy interdistrict office of the Investigative Committee refused to initiate a criminal investigation into the author's complaint against his lawyer due to a lack of corpus delicti. That refusal was annulled on 25 October 2013 by the Sosnovskiy district prosecutor's office. An additional inquiry into the complaint resulted again in a refusal to initiate a criminal investigation, on 4 December 2013. The last such refusal was issued by the investigative bodies on 3 July 2014. The State party noted that all inquiries had been examined by the Office of the General Prosecutor of the Russian Federation, with the author notified about this on 3 September 2014.

9.4 The State party noted that national courts had twice reviewed the author's complaints under article 125 of the Criminal Procedure Code[10] about unlawful actions by his lawyer, by the deputy district prosecutor and by the investigator from the Pavlovskiy interdistrict office of the Investigative Committee, on 27 April 2011 and 26 September 2014. Both complaints had been denied.

9.5 On 22 April 2014, the author's lawsuit against his former lawyer for moral damages was denied by Sosnovskiy District Court. That decision was upheld by Nizhegorodskiy Regional Court on 22 July 2014.

9.6 The State party submitted that, on the basis of the above-mentioned court reviews and inquiries, it deemed the author's allegations of mistreatment while in detention and of violation of his right to quality legal assistance to be unsubstantiated.

[10] According to article 125, decisions of the inquirer, the investigator and the public prosecutor to refuse to institute a criminal case or to terminate a criminal case, as well as other decisions and actions or omissions, which may infringe the constitutional rights and freedoms of the participants in criminal court proceedings or may interfere with citizens' access to the administration of justice, may be appealed against to the district court at the place at which the preliminary investigation was conducted.

Author's further observations on the merits

10. In letters dated 17 November 2014, 2 February 2015 and 28 July 2015, the author reiterated his previous claims of ill-treatment by the police, and of coerced confession.

Issues and proceedings before the Committee

Consideration of admissibility

11.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

11.2 As required under article 5 (2) (a) of the Optional Protocol, the Committee has ascertained that a similar complaint submitted by the author was declared inadmissible by the European Court of Human Rights on 23 February 2011 (application No. 36562/10), since it had been submitted after the expiry of a six-month period from the date on which the final decision was taken by the national authorities. However, article 5 (2) (a) does not preclude the Committee from examining the present communication, as the issue is no longer being examined by the European Court of Human Rights.

11.3 The Committee notes the State party's argument that the author has not exhausted domestic remedies, as he failed to appeal against the 25 December 2009 decision of Pavlovskiy City Court regarding the unlawful actions of his lawyer, and against the decision by the Sosnovskiy district prosecutor's office to deny his appeal for a supervisory review of his sentence. The Committee also notes the author's claim that the decision of 25 December 2009 was annulled on 17 November 2010 as a result of his appeal. With regard to the author's appeal for a supervisory review, the Committee notes that the author submitted at least four appeals for a supervisory review of his sentence between 2008 and 2013, including to the Supreme Court of the Russian Federation. The Committee also recalls its jurisprudence that a request for supervisory review to the chairperson of a court, directed against court decisions that have entered into force and depend on the discretionary power of a judge, constitutes an extraordinary remedy, and that the State party must show that there is a reasonable prospect that such requests would provide an effective remedy in the circumstances of the case.[11] In such circumstances, the Committee considers that, in the present case, it is not precluded, for the purposes of admissibility, by article 5 (2) (b), from examining the communication.

11.4 The Committee notes the author's claim that the State party violated article 2 (3) of the Covenant due to the failure to provide him with an effective remedy in response to his complaints. The Committee recalls its jurisprudence, which indicates that the provisions of article 2 of the Covenant lay down general obligations for States parties and cannot give rise, when invoked separately, to a claim in a communication under the Optional Protocol.[12] The Committee thus considers that the author's claims under article 2 of the Covenant are inadmissible under article 3 of the Optional Protocol.

11.5 The Committee notes the author's claim, under articles 7 and 14 (3) (g) of the Covenant, that he was subjected to beatings by the police after his detention on 3 May 2007 and was forced to confess to a crime that he had not committed. The Committee observes that there are no reports of injuries to the author that would be indicative of beatings or of other forms of ill-treatment or torture, and neither do the documents before the Committee show that the author made any claims about any ill-treatment to his own lawyer, or to the courts during his trial or his cassation appeal. The Committee also observes that in his cassation appeal, the author again confessed to pushing his mother down the stairs, arguing that he did not have the intent to cause her any injuries, but that rather it was due to him being in a state of anger and intoxication. The Committee notes the State party's assertion that the author's allegations of beatings by the police were reviewed by the Office of the General Prosecutor, Sosnovskiy District Court and Nizhegorodskiy Regional Court, and were found to be unsubstantiated. The Committee also notes the State party's argument that

[11] See *Kostenko v. Russian Federation* (CCPR/C/115/D/2141/2012), para. 6.3.

[12] See *K.E.R. v. Canada* (CCPR/C/120/D/2196/2012), para. 7.8.

the author's guilt has been established not just by his confession, but also by other evidence, including witness testimonies of his father and neighbour, and the results of the autopsy. Therefore, and in the absence of other evidence in support of his allegations, the Committee concludes that the author has failed to sufficiently substantiate his claim of ill-treatment and forced confession, for the purposes of admissibility, and therefore declares these claims inadmissible under article 2 of the Optional Protocol.

12. The Committee therefore decides:

(a) That the communication is inadmissible under articles 2 and 3 of the Optional Protocol;

(b) That the present decision shall be communicated to the State party and to the author.